

Sharma (Migration) [2023] AATA 4750 (24 October 2023)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Puneet Sharma

REPRESENTATIVE: Mr Harsatbir Singh (MARN: 1807094)

CASE NUMBER: 2209535

HOME AFFAIRS REFERENCE(S): BCC2020/2417883

MEMBER: Gabrielle Cullen

DATE: 24 October 2023

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa.

Statement made on 24 October 2023 at 12:41pm

CATCHWORDS

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – ground for cancellation – bogus document – bank statement provided in previous visitor visa application – consideration of discretion – grant of visa based on bogus document – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 103, 107, 107A, 109

Migration Regulations 1994 (Cth), r 2.41; Schedule 2, cls 500.27, 600.212; Schedule 4, PIC 4020

CASES

MIAC v Khadgi (2010) 190 FCR 248

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to cancel the applicant's Subclass 500 (Student) visa under s 109(1) of the *Migration Act 1958* (Cth) (the Act).
3. The applicant is a national of India born on 4 February 1992. On 5 September 2019 he made an application for a Visitor visa which was granted on 9 September 2019 and valid to 23 December 2019. He arrived in Australia on 23 September 2019. On 15 December 2019 he made an application for a Student (Higher Education Sector) (Subclass 500) visa. On 4 March 2020 he was granted the visa valid to 10 December 2022.
4. On 14 March 2022, the delegate sent the applicant by email a Notice of Intention to Consider Cancellation (NOICC) of his Student visa under s 109 of the Act and informed him that a response must be provided in writing within 14 calendar days after he was taken to have received the letter.
5. On 4 April 2022 the applicant provided a response to the NOICC in the form of an email and he requested time to provide further evidence.
6. On 28 June 2022, the delegate cancelled the applicant's Student visa under s 109 on the basis that he had not complied with s 103 of the Act on the basis of a bogus document being provided to the Department.
7. On 30 June 2022, the applicant applied to the Tribunal for a review of that decision and attached the notification letter regarding the decision to cancel his visa under s.109.
8. On 8 August 2023 the Tribunal invited him to appear before the Tribunal by video link on 31 August 2023 at 9.30am to give evidence and present arguments relating to the issues arising in his case. On 29 August 2023 the applicant advised he was unable to attend the hearing and provided a medical certificate indicating he was unfit to continue his usual occupation. The Doctor who authored the medical certificate subsequently advised the Tribunal he was fit to attend a hearing by video and the Tribunal informed the applicant the hearing would proceed and a postponement would not be granted.
9. The applicant appeared before the Tribunal via video on 31 August 2023 to give evidence and present arguments. He was in bed and coughing and the hearing was adjourned.
10. The applicant again appeared before the Tribunal via video on 5 October 2023 to give evidence and present arguments. His representative attended the hearing. He was assisted with an interpreter in the Punjabi and English languages.
11. Following the applicant's request, he was given until 20 October 2023 to provide further evidence that the statement in question from the bank provided with his visitor visa is genuine. As at the time of this decision the applicant has not provided any further evidence.
12. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE AND FINDINGS

13. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss 101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances. Section 107A refers to non-compliances in respect of any previous visa held by the applicant.
14. The exercise of the cancellation power under s 109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s 107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s 107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.

Did the notice comply with the requirements in s 107?

15. The Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s 107 and that the notice issued under s 107 complied with the statutory requirements.

Was there non-compliance as described in the s 107 notice?

16. The issue before the Tribunal is whether there was non-compliance in the way described in the s 107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s 107 notice was non-compliance with s 103.
17. On 5 September 2019 the applicant made an application for a Visitor visa which was granted on 9 September 2019 and valid to 23 December 2019. He arrived in Australia on 23 September 2019. On 15 December 2019 he made an application for a Student (Higher Education Sector) (Subclass 500) visa. On 4 March 2020 he was granted the visa valid to 10 December 2022.
18. As raised with the applicant at hearing, a NOICC was sent to the applicant on 14 March 2022, which set out the particulars of the non-compliance being that in his 5 September 2019 application for a Visitor visa he provided a HDFC Bank (India) statement issued on 02 September 2019, confirming that he was the holder of an account number XXXX3142 which showed a current balance of INR 33,33,605. The NOICC noted that based on this supporting document, and meeting all other relevant criteria, he was granted a Visitor (Tourist Stream) (subclass 600) visa on 09 September 2019 valid to 23 December 2019. The NOICC noted that on 4 September 2020 the Department's New Delhi Office conducted integrity checks on the bank statement he provided with his Visitor (Tourist Stream) (subclass 600) visa. The outcome of the integrity check was that HDFC Bank advised that they did not issue the bank statement the applicant provided with his application.
19. The NOICC noted that given this information:

I consider the document is a bogus document as it is counterfeit or altered by a person without the authority to do so, as defined by section 5(1)(b) of the Act.
20. And that:

It appears that you have not complied with s103 of the Act. If you did not comply with s103 of the Act in relation to your Visitor (Tourist Stream) (subclass 600) visa

application, by virtue of s107A of the Act, your Student (Vocational Education) (subclass 500) visa may be cancelled under s109 of the Act.

21. In his response to the NOICC the applicant provided the following written response.

Thanks for giving me an opportunity to respond to this notice. I would like to clarify that I had bank account in HDFC in India which was closed after I arrived in Australia on Subclass 600. At the time of Subclass 600 application, I had funds available in my bank account and provided evidence was genuine.

I have requested the Bank to send me the bank statement via email/post. I am physically not in India so without verification of my identity, HDFC is unable to provide me any information. I have already sent them a written request via post and I hope that bank will respond.

I would request you to allow me another 2-3 weeks so I can gather further evidence to support my request.

I hope you understand my situation.

22. No further response was received from the applicant despite the Department not making its decision until after 2 to 3 weeks had passed.
23. On 28 June 2022 the delegate cancelled the applicant's Student visa under s 109 on the basis that the applicant had not complied with s 103 of the Act as he had provided a bogus document to the Department on the basis of the information outlined above and that no further information has been provided by the applicant to dispute the findings of the Department's integrity check. The delegate noted that Section 107A provides that failure to comply with subsection 103 of the Act in connection with a previous visa application may be grounds for cancellation of the visa holder's current visa and as such providing a bogus document in the application for a Visitor visa granted on 9 September 2019 may result in the student visa granted on 4 March 2020 being liable for cancellation. The delegate also considered the discretionary criteria.
24. At hearing the Tribunal outlined in detail the issues before the applicant as outlined above, including the outcome of the integrity check, and that it may find that the bank statement from HDFC bank is a bogus document within the meaning of s.5(1). It outlined s.103, s.107A and s.109 and the discretionary criteria.
25. The applicant disputed that the bank account was a bogus document and said he did not know why the bank said it was not a genuine document. He provided the following evidence:
- When this visitor visa was being assessed the Department case officer at that time contacted the applicant and advised that the verification checks confirmed the bank statement at issue is genuine.
 - About 7 to 8 months after he submitted the bank statement he needed the money and took the money out as it was hard to financially survive in Australia and then he closed the account.
 - When he received the NOICC he tried to contact the bank to confirm the statement was genuine but they advised he needs to be physically present in India for them to do that.
 - He said he has talked to the bank and told them he cannot physically go there and they have advised him to send his ID and they will provide a verification document

for the bank statement in question. He requested two to three weeks to provide this document. The Tribunal granted him until 20 October 2023 to provide his response.

26. The applicant's representative noted that as the account was closed in 2020 it has been difficult to obtain the information from the bank that the document is genuine.
27. The Tribunal raised a number of concerns including why he had not provided verification since his response to the NOICC over a year before, when he said he was going to and it was of the view if it was the case as claimed, he would have provided the verification previously. He said he emailed the bank but they did not respond. It questioned why the closure of the account would lead the bank to say the statement was not genuine. It also referred to the information indicating prevalence of document fraud in India and it may be that even a further letter from the bank would not overcome its concern that it reasonably suspects that the document is counterfeit.
28. The Tribunal also referred to the relevance of the bank statement to his application for the grant of both the student visa and visitor visa. It then outlined the discretionary criteria and the applicant's responses and that of his representative have been considered as outlined below
29. For the reasons below the Tribunal finds that there was non-compliance with s s.103 by the applicant in the way described in the s.107 notice.

30. *Consideration*

31. The Tribunal has considered all of the submissions and evidence outlined above, however, for the reasons that follow the Tribunal reasonably suspects the document, being the HDFC Bank (India) statement issued on 02 September 2019, confirming the applicant is the holder of an account number XXXX3142 which showed a current balance of INR 33,33,605, as identified and particularised in the s 107 notice, is counterfeit, in that it is an imitation of a bank statement held with HDFC. For the reasons that follow the Tribunal reasonably suspects it is a bogus document within the meaning of s.5(1).
32. Specifically, the term 'counterfeit' is not defined in the Act or Regulations. The Macquarie Dictionary provides a definition for 'counterfeit', which the Tribunal considers pertinent and applicable to the provisions of s 5(1), as follows:

adjective 1. made to imitate, and pass for, something else; not genuine: *counterfeit coin*.

2. pretended: *counterfeit grief*.

–*noun* 3. an imitation designed to pass as an original; a forgery.

4. *Archaic* a copy.

5. *Obsolete* a likeness; portrait.

–*verb* (t) 6. to make a counterfeit of; imitate fraudulently; forge.

7. to resemble.

8. to simulate.

–*verb* (i) 9. to make counterfeits, as of money.

33. The Tribunal has formed the view that there is a reasonable suspicion that the bank statement the subject of the s 107 notice and submitted with the application for the Visitor visa can be described as a document that has been made to imitate and pass for, something

else other than a genuine representation of the applicant's monetary holdings in HDFC bank as at 2 September 2019.

34. In making this finding, The Tribunal places significant weight on the evidence as outlined in the s 107 notice that on 4 September 2020 the Department's New Delhi Office conducted integrity checks on the bank statement in question he provided with his Visitor (Tourist Stream) (subclass 600) visa. The outcome of the integrity check was that HDFC Bank advised that they did not issue the bank statement the applicant provided with his application.
35. The applicant has repeatedly indicated that the bank statement from HDFC is genuine, that prior to the bank advising the Department that it was not genuine, he had withdrawn the money and closed the account. He said it was previously verified by a Department case officer when he applied for the visitor visa. Despite being granted time as he requested to provide a verification of the account in question, by both the Department and Tribunal, he has not. He said at the hearing that at or around the time of receipt of the NOICC he emailed the bank but did not receive a response. He has not provided any further evidence despite the Tribunal giving him time after the hearing, as he requested, to give evidence the bank document in question is genuine.
36. The Tribunal is of the view if the document is genuine and the bank mistakenly said it was not as he had closed the account he would have provided evidence from the bank as he advised he would. However, he has not nor provided any response to the Tribunal despite being given time to respond. With regard to his claim that the Department advised him after verification checks the document is genuine, the Tribunal notes he did not advise of this in his written response to the NOICC and is of the view if this was the case he would have given evidence of this it at that time as well, not only at the Tribunal hearing. It also does not accept that the subsequent closure of the account would result in the bank saying that they did not issue the statement in question.
37. In making this finding it has considered all the evidence submitted by the applicant and submissions by the representative; however, these do not outweigh the Tribunal's concerns and information from the Department's New Delhi post that leads the Tribunal to reasonably suspect that the above document is a bogus document within the meaning of s 5(1).
38. The applicant did not dispute that he submitted the document with his previous application for the Visitor visa. Section 107A refers to non-compliances in respect of any previous visa held by the applicant.
39. The Tribunal therefore finds that the applicant has caused a bogus document to be given. It follows that there has been non-compliance by the applicant with s 103 of the Act in the way described in the s 107 notice.

Should the visa be cancelled?

40. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s 107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s 109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s 109(2).
41. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s 107 notice about the non-compliance and have regard to any prescribed circumstances: s 109(1)(b) and (c). The prescribed circumstances are set out in reg 2.41 of the Regulations. The Tribunal has considered each of the circumstances as follows.

42. The Tribunal raised these with the applicant at hearing and the evidence provided as well as written evidence provided is considered below.

The correct information

43. The non-compliance in this case relates to the provision of a bogus document. The s 107 notice did not particularise information that was said to be incorrect. Accordingly, the Tribunal gives neutral weight to this factor in its considerations.

The content of the genuine document (if any)

44. The applicant has submitted that the bank statement at issue is genuine.
45. The Tribunal has considered all the evidence the applicant has submitted, as well submissions from the representative that this document is genuine but has found, for the reasons outlined above, that the document is a bogus document within the meaning of s 5(1).
46. The Tribunal gives this consideration neutral weight.

Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document

47. The applicant's financial position and being self-funded would have been relevant as to whether under cl 600.212 the applicant had adequate means to support himself or access to adequate means during his stay in Australia. The submission of a bogus document would have also been relevant to the grant of the student visa as cl.500.217 requires the applicant to meet PIC 4020. PIC 4020 requires there be no evidence the applicant has given, or caused to be given a bogus document.
48. The Tribunal considers that this factor weighs strongly in favour of the exercise of the Tribunal's discretion to cancel the visa.

The circumstances in which the non-compliance occurred

49. The non-compliance occurred when the bogus document was provided in support of the Visitor visa application. The applicant contends the document submitted by him with his application for the Visitor visa and the subject of the s 107 notice is genuine. The Tribunal has considered all the evidence made by the applicant, including his written and oral evidence that the document is genuine and the representative's submissions but has found, for the reasons outlined above, that the document is a bogus document within the meaning of s 5(1).
50. The Tribunal gives this neutral weight.

The present circumstances of the visa holder

51. In his evidence to the Tribunal at hearing the applicant noted he had completed all the courses he had enrolled in, including a Certificate III in Commercial Cookery, Certificate IV in Commercial Cookery and Diploma of Hospitality Management. The Tribunal accepts he has been a genuine student and successfully completed the courses he was enrolled in. He said he wants to study a further course, a degree so he could become a head chef or higher chef on return to India but said he was unable to study due to a condition being placed on his visa when the visa was cancelled. The Tribunal accepts such a condition was placed on his visa and accepts he was unable to study or achieve any further course progress. It also

accepts he is unable to work due to a condition place din his visa and he is being supported by friends.

52. The Tribunal raised with him at hearing there was no degree in Australia for commercial cookery and when asked for the name of the course he wants to study he was vague and could not name the course but noted it would assist him on return to obtain a higher job as a chef. Later in the hearing the applicant's representative referred to the course as an Advanced Diploma of Hospitality Management.
53. The Tribunal asked why he could not return to India and undertake courses so he could be a Chef and he said that there is no such course in India which the Tribunal accepts.
54. The Tribunal accepts that he has been unable to study and achieve any course progress since the cancellation of the visa as he has a 'no study' condition placed on his Bridging visa. It has considered that he has successfully completed the Certificates III and IV in Commercial Cookery and Diploma of Hospitality Management and if he returns to India there is no further course available. However, as the applicant's evidence was vague and lacking in detail as to the name of the course he wishes to study, with it only later being clarified by the representative, the Tribunal is of the view he is not genuine in his wish to study further in Australia. It is of the view if he wished to stay further he would have been able to correctly name the course.
55. The applicant said he is not currently in a relationship.
56. It has also considered that he is being supported by friends as he is unable to work.
57. The Tribunal gives this consideration neutral weight.

The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act

58. Nothing adverse is known about the applicant's behaviour concerning his obligations under the Act.
59. The Tribunal gives this factor neutral weight.

Any other instances of non-compliance by the visa holder known to the Minister

60. The Tribunal finds there are no other instances of non-compliance by the applicant known to the Tribunal. The Tribunal gives this factor neutral weight.

The time that has elapsed since the non-compliance

61. The non-compliance occurred when the application was made for the Visitor visa on 5 September 2019. While the Tribunal acknowledges that since this period the applicant has to some extent established himself in Australia, the Tribunal notes the applicant has only been on notice for a much shorter time, since being notified by the Department on 14 March 2022 that there was evidence of non-compliance with the visa application which may result in the cancellation of the visa.
62. In these circumstances the Tribunal gives this neutral weight.

Any breaches of the law since the non-compliance and the seriousness of those breaches

63. There is no information before the Tribunal which suggests that there have been breaches of law by the applicant since the non-compliance.
64. In these circumstances the Tribunal gives this neutral weight.

Any contribution made by the visa holder to the community

65. At hearing the applicant indicated he goes to the Sikh temple to serve and every Wednesday picks and drops some of the aged and takes them to the temple.
66. The Tribunal gives this consideration low weight against the exercise of the Tribunal's discretion to cancel the visa.
67. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual (PAM3) 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

68. *Whether there would be any consequential cancellations under s 140*

69. The applicant claimed to be single with no dependants. There is no evidence that any other person's visa would or may be cancelled if the applicant's visa was cancelled. The Tribunal gives this factor neutral weight.

70. *Whether there are mandatory legal consequences, such as whether cancellation would result in the visa holder being unlawful and liable to detention, or whether indefinite detention is a possible consequence of cancellation, or whether there are provisions in the Act which prevent the person from making a valid visa application without the Minister's intervention*

71. There are mandatory consequences in the case of the cancellation of the visa, including detention and removal from Australia, as well as difficulties in obtaining any further visas. The applicant's representative noted that if he returns to India he cannot apply for 3 years and if the visa is cancelled it is unlikely he would be granted a visa.
72. If the visa remains cancelled, the applicant would continue to hold a Bridging visa for a short period of time to allow him to finalise his affairs before returning to India, subject to any appeal of the Tribunal decision. It is acknowledged that there may be restrictions on travel that may give rise to further delay in the applicant returning to India, however, there are some allowances in legitimate circumstances for relevant Bridging visas to extend. If the applicant remained in Australia without a valid visa, he would be residing unlawfully and liable to detention and removal. The applicant, however, provided oral evidence to the Tribunal that he intended to comply with any lawful direction to depart Australia, and therefore the likelihood of the applicant being detained is remote.
73. If the visa is cancelled, the applicant may be subject to a restriction under s 48 of the Act and the applicant would be restricted to applying for a limited class of visas under the Act. Under public interest criterion (PIC) 4013 he also may not be granted a further visa for three years from the date of cancellation. The cancellation may also restrict the applicant's future ability to make a valid application for any visa other than those prescribed in reg 2.12 while onshore. However, those are also intended and legitimate consequences of cancellation.

74. There is no restriction on which visa he can apply for once he leaves Australia and the Tribunal views it as speculative as to whether any future application after 3 years would be refused due to the cancellation of his student visa.

75. The Tribunal gives this consideration neutral weight.

- *Whether Australia's international obligations, including non-refoulement and best interests of the children as a primary consideration, would be breached as a result of the cancellation*

76. The Tribunal has no evidence that Australia's international obligations may or would be breached if the applicant's visa was cancelled. There is no information to indicate that a visa cancellation would be in breach of Australia's non-refoulement obligations, nor has the applicant applied for refugee status or invoked Australia's protection obligations. When asked by the Tribunal whether he had any fear of returning to India the applicant said he did not.

77. There is also no information before the Tribunal that a decision to cancel the applicant's visa would be in breach of the Conventions of the Rights of the Child (CROC) or that it would be in contravention of the Convention Against Torture.

78. The Tribunal gives this consideration neutral weight.

Any other relevant matters (including the degree of hardship that may be caused to the visa holder and any family members)

79. The Tribunal has considered that he has been a genuine student and successfully completed the Certificates III and IV in Commercial Cookery and Diploma of Hospitality Management. It accepts his stay in Australia was to study when he held the student visa and was enrolled in those courses. It however views as of concern that he claims he wishes to stay and study further to enhance his opportunities of being a Chef in India but could not correctly name the course he wants to study. It is of the view this undermines his claim he wishes to stay in Australia to study further. It notes he has referred to the hardship caused by the no-study condition being placed on his bridging visa but is of the view he has no further intention to study as he could not accurately name the course he wishes to study. It also does not accept that he has and intention to study a further course to improve his employment opportunities as a Chef on return to India. The Tribunal gives this factor neutral weight in exercising its discretion.

80. It has considered the hardship that may be caused applying for a further visa if the visa is cancelled and similar to the reasoning above places neutral weight on this factor. It has also considered the difficulties he has faced as a result of the cancellation of his visa and the no work conditions being placed on his visa but views this as a legitimate consequence of submitting a bogus document in his visitor visa application.

81. The Tribunal has considered the totality of the applicant's circumstances. The Tribunal found that the applicant had given a bogus document with his previous Visitor visa application and that he did not comply with s 103 of the Act. The Tribunal has found that there are grounds for cancelling his visa. The Tribunal's concern is that the decision to grant the Visitor and then subsequently the student visa was based on a bogus document.

82. The Tribunal has considered the applicant's circumstances individually and cumulatively. The Tribunal is satisfied that there are limited aspects that are favourable to the applicant and as outlined above there are factors that weigh in favour of the exercise of the Tribunal's

discretion to cancel the visa. The Tribunal is mindful of the seriousness of providing a bogus document in support of an application for the visa.

83. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s 107 of the Act. Having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

84. The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa.

Gabrielle Cullen
Member

- 85.

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

103 Bogus documents not to be given etc.

A non-citizen must not give, present, [produce]** or provide to an officer, an authorised system, the Minister, the Immigration Assessment Authority, or the Tribunal performing a function or purpose under this Act, a bogus document or cause such a document to be so given, presented, [produced]¹ or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and

*This wording applies to documents given, presented, produced or provided on or after 4 November 2014: Schedule 7 to *Counter Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (No.116, 2014).

- (B) shows cause why the visa should not be cancelled; and
- (c) stating that the Minister will consider cancelling the visa:
 - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.